



COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

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**City of Yakima Planning Commission
PUBLIC MEETING/STUDY SESSION**

City Hall Council Chambers

Wednesday March 27, 2013

3:00 pm – 5:00 pm

YPC Members:

**Chair Ben Shoval, Co-Chair Dave Fonfara, Ron Anderson, Al Rose,
Scott Clark, Paul Stelzer, Bill Cook**

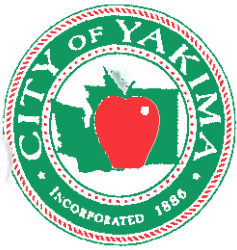
City Planning Staff:

**Steve Osguthorpe, Community Development Director/Planning Manager; Bruce Benson, Supervising
Planner; Jeff Peters and Joseph Calhoun, Associate Planners; Chris Wilson, Assistant Planner; and
Rosalinda Ibarra, Planning Technician**

Agenda

**Announcement: This meeting is a study session on the City's Master Program in
which the general public is invited to participate and comment.**

- I. Call to Order**
- II. Roll Call**
- III. General Audience Participation Not Associated with an Item on the Agenda**
- IV. (3:00 – 3:30p) Community Survey & Built Environment Overview –
Presentation by City Manager Tony O'Rourke**
 - Discussion & Questions**
- V. Staff Distribution of Shoreline Materials**
- VI. Shoreline Master Program Review**
 - Legal Requirements for Determining Shoreline Uses – memo from Steve O.**
 - Review of Meeting Schedule & General SMP Process Requirements**
 - Task#1 – Complete Review of the Shoreline Use Matrix Table**
 - Task#2 – Review Chapter 17.01 Purpose and General Provisions**
 - Task#3 – Review Chapter 17.13 Administration and Enforcement**
- VII. Other Business**
 - Discussion of Changing the Meeting Venue**
- VIII. Adjourn to April 10, 2013**



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MEMORANDUM

To: Planning Commission Members

From: Steve Osguthorpe, Community Development Director *SO*

Date: March 20, 2013

Subject: Legal Requirements for Determining Shoreline Uses

At the last Planning Commission meeting, the Staff provided recommendations on uses suggested by individual Planning Commission members. Some suggested uses were incorporated into the table of uses prepared by our consultant because there was obvious consensus among Commission members on said uses, and because Staff agreed that they were uses supportable by law. Other suggested uses were not incorporated into the Table because it was not yet clear that there was consensus on them amongst Commission members without further discussion, and/or because Staff could not recommend uses that were inconsistent with the law.

Specifically, staff stated that incorporating either duplexes or mixed use buildings into low density single family development was inconsistent with the underlying base zones. Staff further stated that the Shoreline Master Program should be considered an overlay zone that can establish more strict standards than the underlying zone in order to protect the more sensitive environment the Master Program is intended to regulate. However, it should not be used to introduce uses inconsistent with and more liberal than the underlying zone.

In response to Staff comments, the Planning Commission Chair stated that he wanted the staff to provide reference in the RCW's (Revised Code of Washington) to verify this restriction rather than just provide staff's opinion. Accordingly, I have attached specific references from the RCW's to address this request:

1. RCW 36.70A.130(d) states that "... Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan."
2. RCW 36.70A.030(7) defines "development regulations" as, "the controls placed on development or land use activities by a county or city, including, but not limited to ... shoreline master programs ..."
3. RCW 36.70A.280(1) states that, "The growth management hearings board shall hear and determine only those petitions alleging [that] ... a state agency, county,



or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto . . .”

In terms of reference #1 – consistency with the comprehensive plan – it should be noted that the Yakima Urban Area Comprehensive Plan defines the purpose of *Low Density Residential* as “[p]rimarily free standing single-family residences . . .” (See Comprehensive Plan, Page III-14). Duplexes are not listed under the Low Density Residential land use category; they are listed as a characteristic use of the *Medium Density Residential* land use category. Likewise, mixed use buildings are not listed under the Low Density Residential land use category; they are listed under *High Density Residential* land use designation. Therefore, to allow under the Shoreline Master Program duplexes and mixed use buildings in the Low Density Residential district would create an inconsistency with the Comprehensive Plan that, if challenged, would be appealable to the Growth Management Hearings Board.

Related to the question of allowing duplexes along the shoreline, it is significant that the state’s preference for residential uses along the shoreline is limited to single-family residences only. The State Legislature has laid out specific policies on preferred shoreline uses, and has stated that,

“ . . . uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. . .” (RCW 90.58.020 – emphasis added).

But equally important is the fact that the update to the Shoreline Master Program was not intended to be a process for quietly introducing more intense uses into underlying zoning districts without public notice and without soliciting broad public input. This can significantly change the character of single-family neighborhoods, and has broader planning implications as well. If the City wishes to amend its zoning ordinance to allow commercial or mixed use buildings in single family zones, staff suggests that this should be a separate process advertized for that purpose. In any event, it would have to begin with an amendment to the policies of Comprehensive Plan.

I hope this provides the information requested by the Commission. If there are further questions on this topic, I’ll be happy to address them at the next meeting. I’m also happy to meet individually with Commission members to discuss ideas you might like to explore and to provide whatever guidance, suggestions, or information I can offer. Please feel free to call me at (509) 575-3533 if you would like to arrange a time to meet.

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[RCWs](#) [Title 36](#) [Chapter 36 70A](#) [Section 36 70A 130](#)

[36.70A 120](#)

[36 70A 1301](#)

RCW 36.70A.130

Comprehensive plans — Review procedures and schedules — Amendments.

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW [36 70A 040](#) shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW [36 70A 040](#), an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW [36.70A.035](#) and [36.70A.140](#) that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year, except that, until December 31, 2015, the program shall provide for consideration of amendments of an urban growth area in accordance with RCW [36.70A.1301](#) once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter [43.21C](#) RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter [90.58](#) RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

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[RCWs](#) [Title 36](#) [Chapter 36 70A](#) [Section 36.70A.030](#)

[36 70A.020](#)

[36.70A.035](#)

RCW 36.70A.030

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

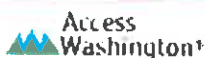
(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety

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[RCWs](#) [Title 36](#) [Chapter 36.70A](#) [Section 36.70A.280](#)

[36.70A.270](#) [36.70A.280](#) [36.70A.290](#)

RCW 36.70A.280

Growth management hearings board — Matters subject to review.

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.210 RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

[2011 c 360 § 17, 2010 c 211 § 7, 2008 c 289 § 5, 2003 c 332 § 2, 1996 c 325 § 2, 1995 c 347 § 108, 1994 c 249 § 31, 1991 sp.s. c 32 § 9.]



FUTURE LAND USE DESIGNATIONS

Following is a brief description of each designation on the Future Land Use Map. Again, these are land use *designations*, not *zoning* districts. For a zoning designation or district to be allowed on a piece of land, it must be compatible with these land use designations on the Future Land Use Map. Conversely, once the FLUM is adopted, it can be assumed that zoning will be applied that results in land being developed as described in the following. The relationship between the FLUM and Zoning Map is described on **Table III-11: Future Land Use and Current Zoning Comparison**.

Low Density Residential

Primarily free standing single-family residences. Residential density is less than 7.0 dwelling units per acre. This is considered the lowest possible residential density that can efficiently support public services.

Medium Density Residential

Characterized by a mixture of single-family detached residences and duplexes, with a variety of other housing types at a residential density ranging between 7.0 and 11.0 dwelling units per acre.

High Density Residential

Multi-family residential development may include apartments, condominiums and townhouses, containing 12 or more dwelling units per acre. A limited range of other mixed land uses may be permitted, such as some professional offices and community services.

Professional Office

A wide range of office uses, such as financial institutions, real estate, insurance, engineering, legal, medical offices and other similar business uses, specifically permitted by the applicable zoning district.

Institutions (Extremely Modified Category)

Institutions include existing and new large-scale institutional facilities such as hospitals and higher educational facilities that may have significant impacts to the surrounding land uses. Institutions such as hospitals and higher education facilities play an important role in the community, providing needed health and educational services to the citizens of the community and region. Hospitals and higher educational facilities also provide major employment in the Yakima Urban Growth Area and contribute to the growth of Yakima's economy. However, when these institutions are located in or adjacent to residential or pedestrian oriented commercial areas, their activities and facilities can generate noise, traffic, and other effects that could be potentially incompatible with the surrounding land uses.

Other Yakima institutions that are in smaller scale such as churches, schools, libraries, museums, public utilities and government buildings may not be designated as Institutions



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RCWs | [Title 90](#) | [Chapter 90.58](#) | [Section 90.58.020](#)

[90.58.010](#) | [90.58.030](#)

RCW 90.58.020

Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW [90.58.100](#) deemed appropriate or necessary

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their

appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

Notes:

Finding — Severability — Part headings and table of contents not law —
1995 c 347: See notes following RCW 36.70A.470.

YAKIMA SHORELINE MASTER PROGRAM

Preliminary Definitions

NOTE TO PLANNING COMMISSION: These draft definitions were derived from Yakima County's Shoreline Master Program, and then revised in "track changes" mode to incorporate necessary definitions from the Shoreline Management Act and Shoreline Master Program Guidelines. Additional revisions were made to convert Yakima County code references to City of Yakima references, and use appropriate City definitions from existing codes. This set of definitions will continue to be revised – with both additions and deletions – as we progress through SMP development.

17.01.090 Definitions

Whenever the words and terms set forth in this ~~chapter~~ section appear in this title, they shall be given the meaning attributed to them by this ~~chapter~~ section. ~~References to specific provisions of YCC Title 13 and the International Building Codes, statutes and Washington Administrative Code provide greater detail for purposes of administering this title. Definitions established by RCW 90.58.030 and WAC 173 have been incorporated herein and should these definitions in the RCW or WAC be amended, the most current RCW or WAC definition shall apply. Except where specifically defined in this section, the RCW or the WAC, all words used in this Shoreline Master Program shall carry their customary meanings. Definitions listed in this chapter shall be applied to all critical areas, including Flood Hazard Areas, whether they occur inside or outside Shoreline jurisdiction, unless the definition itself identifies the term as applying to Shoreline or Flood Hazard administration, in which case the definition only applies to that situation.~~

"Abutting" means bordering upon, to touch upon, or in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

"Accessory" means any use or development incidental to and subordinate to a primary use of a shoreline use or development. See also Appurtenance, Residential.

"Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.

"Adjacent" means to be nearby and not necessarily abutting.

"Administrative Official" means the duly appointed City of Yakima Director of Community Development, whichever is appropriate, or their designee, Planning Division Director of the Public Services Department, or his designee, or the relevant decision maker identified in YCC Title 16B (Project Permit Administration); synonymous with "administrator" or "director."

"Adoption by rule" means an official action by the Department of Ecology to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded;

allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation. Agricultural activities include plowing, discing, harrowing, compacting, planting, and harvesting, spraying, etc;

"Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.

"Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

- A. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;
- B. corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- C. farm residences and associated equipment, lands, and facilities; and
- D. roadside stands and on-farm markets for marketing fruit or vegetables; and

"Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

"Alluvial fan" is a low, outspread, relatively flat to gently sloping feature, shaped like an open fan or a segment of a cone, deposited by a stream at the place where it issues from a valley upon a plain or broad valley, or where a tributary stream is near or at its junction with the main stream, or wherever a constriction in a valley abruptly ceases or the gradient of the stream suddenly decreases; it is steepest near the mouth of the valley where its apex points upstream, and it slopes gently and convexly outward with gradually decreasing gradient.

"Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

"Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development, construction or use on a site.

"Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the Department of Ecology for review and official action pursuant to this chapter; or an official action by the Department of Ecology to make a

local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

Appurtenance, residential" includes a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program.

"Aquaculture" means the culture and/or farming of food fish, shellfish, and or other aquatic plants and animals in fresh water. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals. Commercial aquaculture is conducted to produce products for market with the objective of earning a profit. Non-commercial aquaculture is conducted for the benefit of native fish recovery, education and interpretation, or other public benefit or use.

"Aquifer" means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.

"Critical Aquifer Recharge Area" means an area with a critical recharging effect on aquifers used for potable water, or areas where a drinking aquifer is vulnerable to contamination that would affect the potability of the water.

"Bank" means the land surface above the ordinary high water mark that abuts a body of water and contains it to the bankfull depth.

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the floodplain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section.

"Barb" is a structure used primarily in streams. It is a low relief projection from a bank, angled upstream, to redirect flow away from the bank towards the center of the channel. As opposed to groins or jetties, barbs are not barrier types of structures; they function by re-directing flows that pass over the top of the structure.

"Base Flood" for purposes of administering ~~16D-05~~Section 17.09.020 means the flood having a 1-percent chance of being equaled or exceeded in any given year. (Ref. IBC 1612.2)

"Base flood elevation" for purposes of administering Section 17.09.020~~16D-05~~ means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). (Ref. IBC 1612.2)

"Basement" for purposes of administering Section 17.09.020~~16D-05~~ means any area of the building having its floor subgrade (below ground level) on all sides. (Ref. IBC 1612.2)

"Bed" means the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

"Bedrock" means in-place solid rock.

"Berm" means a mound of earth material used as a protective barrier or to control the direction of water flow.

"Best Management Practices" or "BMPs" means schedules of activities, practices, maintenance procedures, and structural and/or managerial practices that, when used singly or in a combination prevent or reduce adverse impacts to the environment.

"Bioengineering" means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to aquatic and terrestrial wildlife. Bioengineered or biotechnical bank protection designs may incorporate limited use of armored toes and wood structural elements.

"Breakwater" means a fixed or floating off-shore structure that protects the shore from wave action or currents.

"Building Official" means the manager of the Offices of Code Administration or designee.

"Bulkhead" means a vertical or nearly vertical erosion protection structure placed parallel to the shore consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

~~"Cabin" means a small single family residence of 800 square feet or less, without a garage or carport and without large accessory buildings. Small accessory buildings, such as detached storage sheds or accessory structures totaling 12 square feet or less, may be allowed. Dwellings not meeting these standards are considered standard single family residences.~~

"Channel" means an open conduit, either naturally or artificially created, which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water.

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

~~"Chief Building Official" or "building official" means the manager of the Building and Fire Safety Division of the Department of Public Services or designee.~~

"Classification" means the definition of value and hazard categories to which critical areas and natural resource lands will be assigned.

"Clearing" means the removal of timber, brush, grass, ground cover or other vegetative matter from a site.

"Compaction" means compressing soil through some mechanical means to make it denser.

"Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the Department of Ecology's Shoreline Master Program Guidelines effective January 17, 2004, as now or hereafter amended.

"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program.

"Confinement feeding operation" means the use of structures or pens for the concentrated feeding or holding of animals or poultry, including but not limited to horses, cattle, sheep, or swine. This

definition includes dairy confinement areas, slaughterhouses, shipping terminal holding pens, poultry and/or egg production facilities and fur farms, but does not include animal husbandry and normal farming practices.

"Construction" means the assembly, placement, or installation of structures, roadways, transmission lines, and other improvements within a project site.

"Critical areas" as defined under chapter 36 70A RCW includes the following areas and ecosystems:

- E. Wetlands;
- F. Areas with a critical recharging effect on aquifers used for potable waters;
- G. Fish and wildlife habitat conservation areas;
- H. Frequently flooded areas; and
- I. Geologically hazardous areas.

"Designated" means formal legislative action to identify and describe a critical area.

"Department" means the City of Yakima County Public Services Community Development Department, Planning Division.

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. See also Substantial Development. Development does not include the following activities:

- A. Interior building improvements that do not change the use or occupancy;
- B. Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections.

~~any use as defined under RCW 90.58.030(2)(d) (definitions), or the division of land into lots or parcels in accordance with the county Subdivision Ordinance (YCC Title 14), and any clearing, excavation, dredging, drilling, filling, dumping, removal of earth and mineral materials, or other permanent or temporary modification of a site up to, but not including, construction as defined in this chapter. For the purpose of Chapters 16D.05.20 through 16D.05.72, "development" also means any manmade change to improved or unimproved real estate located within the special flood hazard area, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling, temporary or permanent storage of equipment and works defined in this chapter. (Ref. IBC-G 201-2)~~

"Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned

unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

"Dike" means an embankment to prevent flooding by a stream or other water body. A dike is also referred to as a levee.

"Dock" means a structure built over or floating upon the water and used as a landing place for boats and other marine transport, fishing, swimming, and other recreational uses.

"Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

"Dredging" means removal of earth from the bed of a stream, lake, or pond for the purpose of flood control; navigation; utility installation (excluding on-site utility features serving a primary use, which are "accessory utilities" and shall be considered a part of the primary use); the construction or modification of essential public facilities and regional transportation facilities; restoration (of which the primary restoration element is sediment/soil removal rather than being incidental to the primary restoration purpose); increasing the depth of surface water and/or obtaining minerals, construction aggregate, or landfill materials. This definition does not include excavation for mining within a pond created by a mining operation approved under this title or under a local zoning ordinance, or a mining operation in existence before Zoning, Shorelines, or Critical Areas permits were required for such operations. Dredging, as regulated in this SMP under Section 17.07.060, is not intended to cover other excavations waterward of the ordinary high water mark that are incidental to construction of an otherwise authorized use or modification (e.g., bulkhead replacements, large woody debris installations, boat launch ramp installation, pile placement).

"Earth material" means any rock, natural soil, or combination thereof.

"Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

"Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

"Enhance" means to strengthen any of the basic functional properties listed in Section 16D.06.05 Chapter 17.09 that exist but do not perform at optimum efficiency. "Optimum" refers to the most favorable or best performance of each function achievable for a specific segment of stream or lake corridor.

"Ephemeral stream" means a stream that flows only in response to precipitation with no groundwater association, usually less than 30 days per year. The lack of any groundwater association results in a lack of a distinctive riparian vegetation compared to the surrounding landscape.

"Erosion" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

"Events and Temporary Uses" means a social or community occasion or activity lasting for a limited time. Events and Temporary Uses within permitted facilities or legally non-conforming facilities that are

designed for such uses are not included in this definition, as long as they do not materially interfere with the normal public use of the water or shorelines of the state.

"Excavation" means the mechanical removal of earth material.

"Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a substantial development permit, but which must otherwise comply with applicable provisions of the Act and the local master program.

"Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

"Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- B. The action provides a reasonable likelihood of achieving its intended purpose; and
- C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where these Guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land any material, such as (by way of illustration) earth, clay, sand, rock, gravel, concrete rubble, wood chips, bark, or waste of any kind, which is placed, stored or dumped upon the surface of the ground resulting in an increase in the natural surface elevation. The physical structure of a shore stabilization structure shall not be considered fill. However, fill placed behind the structure is considered fill. Stream bed manipulation for irrigation diversions or restoration shall not be considered fill.

"Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood hazard permit" means written approval applied for and obtained in accordance with such rules and regulations as are established under this title.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

"Floodplain" ~~means a land area adjoining a river, stream, watercourse or lake which has been determined likely to flood. The extent of the floodplain may vary with the frequency of flooding being considered. "Flood plain" is synonymous with the one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.~~

"Flood-prone" means a land area for which a floodway and floodplain has not been determined with respect to any specific flood frequency, but for which the potential for flooding can be identified by information observable in the field such as soils or geological evidence, or by materials such as flood studies, topographic surveys, photographic evidence or other data.

"Flood-proofing" for purposes of administering 16D.05 means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damages to lands, water and sanitary facilities, structures and contents of buildings.

"Floodway" means the area, as identified in a master program, that either:

- A. Has been established in Federal Emergency Management Agency Flood Insurance Rate Maps or floodway maps; or
- B. Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state, regular channel of a river, stream, or other watercourse, plus the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway fringe" for purposes of administering 16D.05 means that portion of a floodplain which is inundated by floodwaters but is not within a defined floodway. Floodway fringes serve as temporary storage for floodwaters.

"Forest land" means land primarily devoted to forest practices activities.

"Forest practices" means activities conducted under federal forest practices approval or under a Forest Practices permit reviewed and approved by the Washington Department of Natural Resources pertaining to the management of forest land, including growing, managing, harvesting, and interim storage of merchantable timber for commercial value, as well as incidental activities reviewed under federal or state approval, such as road construction and maintenance (including bridges) and mining activities.

"Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on

geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

"Grade" means the vertical location of the ground surface. "Natural grade" is the grade as it exists or may have existed in its original undisturbed condition. "Existing grade" is the current grade in either its undisturbed, natural condition or as disturbed by some previous modification. "Rough grade" is a stage where grade conforms approximately to an approved plan. "Finish grade" is the final grade of the site which conforms to an approved plan. "Average grade level" is the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

"Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land~~any excavation, filling, or combination thereof.~~

"Groin" means a barrier type of structure that extends from the stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials. Groins may serve a variety of functions, including bank protection, pool formation, and increased roughness, and may include rock structures, debris jams, or pilings that collect wood debris. See also Barb and Weir.

"Groundwater" means water that occurs beneath the land surface, also called subsurface water or subterranean water. Groundwater includes water in the zone of saturation of a water-bearing formation.

"Guidelines" means those standards adopted by the Department of Ecology into the Washington Administrative Code (WAC) to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards also provide criteria for local governments and the Department of Ecology in developing and amending master programs.

"Hard structural shoreline stabilization" means shoreline erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, rip-rap, and similar structures.

"Height" is measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the SMP specifically requires that such appurtenances be included: Provided further, that temporary construction equipment is excluded in this calculation.

"Hydrologically Related Critical Areas (HRCA)" include all those areas identified in ~~section 16D.06-03~~Section 17.09.XXX, within ~~the City of Yakima County~~ which are important and deserving of protection by nature of their value for the functional properties found in Section ~~16D.06-05~~17.09.XXX.

"Hyporheic" means a groundwater area adjacent to and below channels where water is exchanged with channel water and water movement is mainly in the downstream direction.

"Intermittent stream" means a stream which flows only during certain times of the year, with inputs from precipitation and groundwater, but usually more than 30 days per year. The groundwater association generally produces an identifiable riparian area. This definition does not include streams that are intermittent because of irrigation diversion or other manmade diversions of the water.

"In-water structures" are structure placed by humans within a stream, river or lake waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-water structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, recreation, or other purpose.

"Lake or pond" means a~~n~~ inland body of standing water. ~~The term includes the reservoir or expanded part of a river~~ behind a dam.

"Limited master program amendment" means a master program amendment that addresses specific procedural and/or substantive topics and which is not intended to meet the complete requirements of a comprehensive master program update.

"Lowest floor" for purposes of administering ~~16D.05~~Section 17.09.020 means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this title.

"Maintenance, Normal" means those usual acts to prevent a decline, lapse, or cessation from a legally established condition. See Repair, Normal.

"Manufactured home" means a structure fabricated on a permanent chassis that is transportable in one or more sections; is designed to be used with or without a permanent foundation when connected to the required facilities; has sleeping, cooking, and plumbing facilities or any combination thereof; and is intended for human occupancy or is being used for residential purposes. ~~Although Washington Administrative Code (WAC) and Yakima County Code Titles 13 and 15 separately define and distinguish between "manufactured home" and "mobile home" according to federal or state construction codes for such dwellings, the term "manufactured home" shall include "mobile home" for regulatory purposes under this chapter. The term shall not include "recreation vehicle," "commercial coach," "camping vehicle," "travel trailer," "park trailer," "tip-out," and any other similar vehicle which is not intended, designed, constructed or used for residential purposes for use as a single-family dwelling and is not otherwise labeled as a manufactured or mobile home under any federal or state law. For floodplain management purposes only under this chapter, park trailers, camping vehicles, travel trailers, tip-outs, and other similar vehicles shall be considered manufactured homes when placed on a site for greater than one hundred eighty days.~~

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale ~~in accordance with YCC Title 15 of this Code pursuant to YMC Title 15.~~

~~"Existing Manufactured home park or subdivision, existing" means a manufactured home park or subdivision that was completed before December 15, 1981, the effective date of the floodplain management regulations for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before October 1, 1995, the effective date of these floodplain management regulations.~~

~~"May" means the action is acceptable, provided it conforms to the provisions of this chapter.~~

"Minerals" means gravel, sand and metallic and non-metallic substances of commercial value.

"Mining" means the removal of naturally occurring minerals and materials from the earth for commercial value. Mining includes processing and batching. Mining does not include large excavations for structures, foundations, parking areas, etc. ~~Also see Dredging and Excavation (16D.06.20). Also see introduction to Appendix B.~~

~~"Must" means a mandate; the action is required.~~

"Native" means indigenous to, or originating naturally within Yakima County.

"Natural conditions" means those conditions which arise from or are found in nature and not modified by human intervention; not to include artificial or manufactured conditions.

~~"Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.~~

~~"New construction," for purposes of administering 16D.05 Section 17.09.020, means the start of construction after construction plans were submitted to the City and the building division reviewed and approved the construction plans to create a structure. structures for which the start of construction commenced on or after June 5, 1985, the date Yakima County enacted Ordinance 3-1985 in order to meet the requirements of the National Flood Insurance Program. October 1, 1995, the effective date of the ordinance codified in this title shall be used for defining the term new construction as it applies to all other Critical Areas requirements established under this Title by Ordinance 8-1995.~~

~~"Nonconforming structure" for purposes of administering 16D.05 Section 17.09.020 means a structure which was lawful prior to the adoption or amendment of this chapter, but which fails by reason of such adoption or amendment to conform to the present requirements of the zoning district in which it is located. In addition, the structure may not be permitted as a new structure under the terms of this chapter because the structure may not be in conformance with the applicable elevation and/or floodproofing requirements. means a structure which was legally constructed prior to October 1, 1995, the effective date of this title, but which would not be permitted as a new structure under the terms of this title because the structure is not in conformance with the applicable elevation and/or floodproofing requirements.~~

~~"Nonconforming use" for purposes of administering 16D.05 Section 17.09.020 means a use of land or structure which was lawfully established and maintained prior to the adoption or amendment of this chapter, but does not conform to this chapter for the zoning district in which it is located. In addition, the use may not be permitted as a new use under the terms of this chapter because the use may not be~~

~~in conformance with the applicable elevation and/or floodproofing requirements. means the use of a building, structure or land which was lawfully established, existing and maintained at the effective date of provisions of this title but which, because of the application of this title to it, no longer conforms to the use or applicable elevation and/or flood proofing requirements of this title and which would not be permitted as a new use under the terms of this title.~~

"Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

"Ordinary High Water Mark" (OHWM) means that mark on lakes and streams which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Perennial stream" means a stream that flows year round in normal water years. Groundwater is a source of much of the water in the channel.

"Permit" means any substantial development, variance, conditional use permit, or revision authorized under chapter 90 58 RCW.

"Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: Comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage. Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

"Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below:

- A. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M- 6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
- B. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.
- C. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
- D. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

"Project site" means that portion of any lot, parcel, tract, or combination thereof which encompasses all phases of the total project proposal.

"Provisions" means policies, regulations, standards, guideline criteria or environment designations.

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

"Qualified Professional" shall meet the following criteria:

- A. A qualified professional for wetlands must have a bachelors degree or higher in biology, ecology, soil science, botany, or a closely related field, and a minimum of five years of professional experience in wetland identification and assessment in the Pacific Northwest.
- B. A qualified professional for stream corridors must have a bachelors degree or higher in wildlife biology, ecology, fisheries, or closely related field, and a minimum of five years professional experience related to the subject species/habitat type.
- C. A qualified professional for geologically hazardous areas and preparation of geo-technical reports must be a professional engineering geologist or civil engineer, licensed in the state of Washington.
- D. A qualified professional for critical aquifer recharge areas must be a professional hydrogeologist, or environmental engineer licensed in the state of Washington.
- E. A qualified professional for channel migration zone reports must be a professional engineering geologist, civil engineer or geologist licensed in the state of Washington, with a minimum of five years of professional experience in geomorphology.
- F. A qualified professional for flood studies must be a professional engineering geologist or civil engineer licensed in the state of Washington.
- G. A qualified professional for economic studies must have a bachelors degree or higher in economics or business administration with 5 years of professional experience. The five year standard shall be waived for professionals with a PhD degree.
- H. A qualified professional for habitat assessments and habitat management plans must have a bachelors degree or higher in biology and professional experience related to the subject species or habitat.
- I. Or other person/persons with experience, training, expertise and related work experience appropriate for the relevant critical area subjects determined acceptable to the Administrative Official.

"Recreation vehicle" means a vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Repair, Normal" means to restore a development or structure to a state comparable to its original, legally established condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment. See also Maintenance, Normal.

"Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions that have been lost or destroyed through natural events or human activity, such as those listed in Section 17.09.XXX. "Restore" means to re-establish the basic functional properties listed in Section 16D.06.05 that have been lost or destroyed through natural events or human activity. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the site to aboriginal or pre-European settlement conditions.

"Revetment" means a facing placed on a bank or bluff to protect a slope, embankment, or shore structure against erosion by wave action or currents.

"Riparian Vegetation" means the terrestrial vegetation that grows beside rivers, streams, and other freshwater bodies and that depends on these water sources for soil moisture greater than would otherwise be available from local precipitation.

"Riprap" means a layer, facing, or protective mound of stones randomly placed to prevent erosion, scour, or sloughing of a structure or embankment; also the stone used for this purpose.

"Scour" means the removal of underwater material by waves and currents, especially at the base or toe of a shore stabilization structure.

"Shall" means a mandate; the action must be done

"Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams and lakes which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

"Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

"Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

"Shorelines of statewide significance" means the following shorelines of the state:

- A. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

B. Those natural rivers or segments east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer; and

C. Those shorelands associated with A and B, above.

"Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state; "Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

~~"Shoreline," means those water areas, the associated features, and the land areas within Yakima County that are subject to the State Shoreline Management Act, especially as defined in RCW 90.58.030 (definitions), and as further identified in 16D.10.03 (Shoreline Jurisdiction).~~

"Shoreline environment designations" are a classification of shorelines established by local shoreline master programs in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.

"Shorelines Hearings Board" means a six member quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, enforcement penalty and appeals by the City on Department of Ecology approval of master programs, rules, regulations, guidelines or designations under the SMA.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

"Shoreline stabilization" means structural or non-structural modifications to the existing shoreline intended to reduce or prevent erosion of uplands or beaches. They are generally located parallel to the shoreline at or near the OHWM.~~"Shore stabilization" means the construction or modification of bulkheads, retaining walls, dikes, levies, riprap, breakwaters, jetties, groins, weirs, and other structures along the shore, for the purpose of controlling stream undercutting, stream erosion or lake shore erosion.~~

"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

"Single Improved Recreational Vehicle Site" means a site on which a recreational vehicle, as defined in 16D.02.322, may be parked with minimal services (such as electricity, well and septic system), without a garage or carport, and without large accessory buildings (small detached storage sheds or accessory structures totaling 120 square feet or less may be allowed). Recreational vehicle sites not meeting these criteria are considered single family residences.

"Slope" means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

"Soft structural shoreline stabilization" means shoreline erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft structural shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a non-linear, generally sloping arrangement. Linear, vertical faces are an indicator of Hard Structural Shoreline Stabilization (see above definition).

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, wood waste, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. Solid waste shall not include earth, clay, sand or gravel.

"Special flood hazard area" means the land in the floodplain identified by the Federal Emergency Management Agency that is subject to a one-percent or greater chance of flooding in any given year; commonly known as the 100-year floodplain.

"Start of construction" for purposes of administering 16D.05, means the first placement of permanent construction of a structure (other than a manufactured home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. "Permanent construction" does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garage, or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a manufactured home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For manufactured homes not within a manufactured home park, "start of construction" means the affixing of the manufactured home to its permanent site. For manufactured homes within manufactured home parks, "start of construction" is the date on which the construction of facilities for servicing the site on which the manufactured home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

"State master program" is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by Ecology.

"Stream" means water contained within a channel, either perennial, intermittent or ephemeral. Streams include natural watercourses modified by man, for example, by stream flow manipulation, channelization, and relocation of the channel. They do not include irrigation ditches, wasteways, drains, outfalls, operational spillways, canals, stormwater runoff facilities, or other artificial watercourses.

"Stream corridor," as used in this title, means those features listed and described in Chapter 16D.06.03 and related appendices to this title.

"Structure" means ~~anything constructed or erected which requires location on the ground, or attached to something having a location on the ground, but not including fences or walls used as fences less than six feet in height. The term also includes gas or liquid storage tanks when located principally above ground.~~ a permanent or temporary edifice or building, or any piece of work artificially built or

composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels

"Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. See WAC 173-27-040 for a list of developments that are not considered substantial.

"Substantial improvement" for purposes of administering ~~16D-05~~Section 17.09.020 means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the assessed value of the structure either:

- A. Before the improvement or repair is started; or
- B. Before the damage occurred to a structure that has been damaged and is being restored.

For the purposes of this definition, "substantial improvement" occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The total value of all improvements to an individual structure undertaken subsequent to October 1, 1995, the effective date of this title, shall be used to define "substantial improvement" for said structure. The term does not, however, include either:

- A. Any project for improvement to a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- B. Any alteration of a structure listed on the National Register or Historic Places or a state inventory of historic places.

"Substantially degrade" means to cause significant ecological impact.

"Use" means the activity to which land or a building is devoted and for which either land or a building is or may be occupied or maintained.

"Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline.

"Vegetative buffer or Buffer" means an area extending landward from the ordinary high water mark of a lake or stream and/or from the edge of a wetland which is maintained or otherwise allowed to provide, under optimal conditions, adequate soil conditions and native vegetation for the performance of the basic functional properties of a stream corridor, wetland and other hydrologically related critical areas as set forth in Chapter 16D.06.05 (Functional Properties) and 16D.07.04 (Wetland Functions and Rating). It is understood that optimal conditions do not always exist due to degradation of the vegetative buffer before establishment of this title, or due to colonization by non-native species. Such conditions still provide functional properties, though at a lower level, depending on the difference from natural conditions.

"Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

"Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

"Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

"Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

"Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- C. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- D. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

"Wetland" or "wetlands" means that area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands specifically intentionally created from non-wetland areas to mitigate conversion of wetlands.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife habitat" means areas which, because of climate, soils, vegetation, relationship to water, location and other physical properties, have been identified as of critical importance to maintenance of wildlife species.

~~"Works" means any dam, wall, wharf, embankment, levee, dike, berm, pile, bridge, improved road, abutments, projection, excavation, channel rectification, or improvement attached to, or affixed upon, the realty.~~

POTENTIAL MEETING SCHEDULE FOR SMP PRESENTATION

SMP SECTION 2: SHORELINE REGULATIONS

* Discussion priorities

March 27 – Jeff

- Chapter 17.01 Purpose and General Provisions
- Chapter 17.03 Finalize Use Matrix with Planning Commission comments*
- Chapter 17.13 Administration and Enforcement

April 10 – Lisa

- Section 17.05.040 Public Access*
- Section 17.07.050 Commercial Development
- Section 17.07.090 Industry
- Section 17.07.120 Recreational Development
- Section 17.07.130 Residential Development
- Section 17.07.170 Transportation
- Section 17.07.180 Utilities
- Section 17.07.190 Redevelopment, Repair, and Maintenance*
- Chapter 17.11 Existing Uses, Structures and Lots*

April 17 (special meeting date) – Jeff

- Section 17.05.010 Archaeological and Historic Resources
- Section 17.05.040 Water Quality, Stormwater, and Nonpoint Pollution
- Section 17.07.010 Agriculture
- Section 17.07.020 Aquaculture
- 17.07.070 Fill
- 17.07.110 Mining
- 17.07.140 Shoreline Habitat and Natural Systems Enhancement Projects
- 17.07.160 Signs

May 8 – Amy

- Section 17.05.020 Environmental Protection*
- Section 17.05.030 Shoreline Vegetation Conservation*
- Section 17.05.060 Flood Hazard Reduction*
- Section 17.07.030 Boating and Private Moorage Facilities
- Section 17.07.150 Shoreline Stabilization
- Chapter 17.09 Critical Areas*

May 22 – Jeff

- Section 17.03.080 Development Standards*
- Section 17.07.040 Breakwaters, Jetties, Groins and Weirs
- Section 17.07.060 Dredging and Dredge Material Disposal
- Section 17.07.100 In-Stream Structures

June 12 – Jeff (Lisa and Amy remotely?)

- Restoration Plan
- Cumulative Impacts Analysis

July / August

- Wrap up edits to SMP
- Produce final draft for public hearing

September

- PC hearing and recommendation on SMP

October / November

- Yakima City Council Public Hearing and Adoption of SMP

CHAPTER 17 - SHORELINE REGULATIONS

SMP SECTION	PC MEETING DATE	KEY PRESENTER	PRIORITY FOR DISCUSSION?
17.01 PURPOSE AND GENERAL PROVISIONS			
17.01.010 Authority	March 27	Jeff	
17.01.020 Applicability	March 27	Jeff	
17.01.030 Findings	[pending]		
17.01.040 Purpose	March 27	Jeff	
17.01.050 Relationship to Other Codes, Ordinances and Plans	March 27	Jeff	
17.01.060 Liberal Construction	March 27	Jeff	
17.01.070 Severability	March 27	Jeff	
17.01.080 Effective Date	March 27	Jeff	
17.01.090 Definitions	March 27	Jeff	
17.01.100 Shoreline Jurisdiction	March 27	Jeff	
17.03 SHORELINE ENVIRONMENT DESIGNATIONS			
17.03.010 Floodway / Channel Migration Zone (CMZ)	February 13, February 27, March 13 (DONE)		
17.03.020 Urban Conservancy	February 13, February 27, March 13 (DONE)		
17.03.030 High Intensity	February 13, February 27, March 13 (DONE)		
17.03.040 Essential Public Facilities	February 13, February 27, March 13 (DONE)		
17.03.050 Shoreline Residential	February 13, February 27, March 13 (DONE)		

SMP SECTION	PC MEETING DATE	KEY PRESENTER	PRIORITY FOR DISCUSSION?
17.03.060 Aquatic	February 13, February 27, March 13 (DONE)		
17.03.070 Shoreline Use and Modification Matrix	February 13, February 27, March 13, and March 27	Jeff	
17.03.080 Development Standards	May 22	Jeff	
17.03.090 Official Shoreline Maps and Unmapped or Undesignated Shorelines	March 27	Jeff	
17.03.100 Pre-Designation of Urban Growth Areas	March 27	Jeff	
17.05 GENERAL REGULATIONS			
17.05.010 Archaeological and Historic Resources			
17.05.020 Environmental Protection	May 8	Amy	
17.05.030 Shoreline Vegetation Conservation	May 8	Amy	
17.05.040 Water Quality, Stormwater, and Nonpoint Pollution	April 17	Jeff	
17.05.050 Public Access	April 10	Lisa	
17.05.060 Flood Hazard Reduction	May 8	Amy	
17.07 USE-SPECIFIC AND MODIFICATION REGULATIONS			
17.07.010 Agriculture	April 17	Jeff	
17.07.020 Aquaculture	April 17	Jeff	
17.07.030 Boating and Private Moorage Facilities	May 8	Amy	
17.07.040 Breakwaters, Jetties, Groins and Weirs	May 22	Jeff	
17.07.050 Commercial Development	April 10	Lisa	
17.07.060 Dredging and Dredge Material Disposal	May 22	Jeff	
17.07.070 Fill	April 17	Jeff	
17.07.080 Forest Practices	NA		
17.07.090 Industry	April 10	Lisa	
17.07.100 In-Stream Structures	May 22	Jeff	
17.07.110 Mining	April 17	Jeff	
17.07.120 Recreational Development	April 10	Lisa	

SMP SECTION	PC MEETING DATE	KEY PRESENTER	PRIORITY FOR DISCUSSION?
17.07.130 Residential Development	April 10	Jeff	
17.07.140 Shoreline Habitat and Natural Systems Enhancement Projects	April 17	Jeff	
17.07.150 Shoreline Stabilization	May 8	Amy	
17.07.160 Signs	April 17	Jeff	
17.07.170 Transportation	April 10	Lisa	
17.07.180 Utilities	April 10	Lisa	
17.07.190 Redevelopment, Repair, and Maintenance	April 10	Lisa	
17.09 CRITICAL AREAS			
17.09.010 General Provisions	May 8	Amy	
17.09.020 Flood Hazard Areas	May 8	Amy	
17.09.030 Fish and Wildlife Habitat and the Stream Corridor System	May 8	Amy	
17.09.040 Wetlands	May 8	Amy	
17.09.050 Geologically Hazardous Areas	May 8	Amy	
17.09.060 Critical Aquifer Recharge Areas	May 8	Amy	
17.11 EXISTING USES, STRUCTURES AND LOTS			
17.11.010 Nonconforming Uses	April 10	Lisa	
17.11.020 Nonconforming Structures	April 10	Lisa	
17.11.030 Nonconforming Lots	April 10	Lisa	
17.13 ADMINISTRATION AND ENFORCEMENT			
17.13.010 Roles and Responsibilities	March 27	Jeff	
17.13.020 Interpretation	March 27	Jeff	
17.13.030 Statutory Noticing Requirements	March 27	Jeff	
17.13.040 Application Requirements	March 27	Jeff	
17.13.050 Exemptions from Shoreline Substantial Development Permits	March 27	Jeff	
17.13.060 Shoreline Substantial Development Permits	March 27	Jeff	
17.13.070 Shoreline Conditional Use Permits	March 27	Jeff	
17.13.080 Shoreline Variance	March 27	Jeff	

SMP SECTION		PC MEETING DATE	KEY PRESENTER	PRIORITY FOR DISCUSSION?
Permits				
17.13.090	Duration of Permits	March 27	Jeff	
17.13.100	Initiation of Development	March 27	Jeff	
17.13.110	Review Process	March 27	Jeff	
17.13.120	Appeals	March 27	Jeff	
17.13.130	Amendments to Permits	March 27	Jeff	
17.13.140	SMP Amendments	March 27	Jeff	
17.13.150	Enforcement	March 27	Jeff	
17.13.160	Monitoring	March 27	Jeff	

YAKIMA SHORELINE MASTER PROGRAM

Preliminary Chapter 17.01

PRELIMINARY 17.01 PURPOSE AND GENERAL PROVISIONS

17.01.010 Authority

Consultant note: The County's Regional SMP addressed not only its shoreline jurisdiction, but also critical area regulations outside of shoreline jurisdiction. We have amended the sections below to be applicable to the City's shoreline jurisdiction only.

- A. ~~Yakima County Code (YCC) Title 16D~~ Title 17 of the Yakima Municipal Code is established pursuant to ~~RCW 36.70A.060 (Growth Management Act Natural resource lands and critical areas—Development regulations), RCW Chapter 90.58 (Shoreline Management Act), RCW Chapter 43.21C (State Environmental Policy Act), and federal requirements for eligibility in the National Flood Insurance Program, pursuant to the Code of Federal Regulations (CFR), WAC 173-26 (State master program approval/amendment procedures and master program guidelines), and WAC 173-27 (Shoreline management permit and enforcement procedures).~~ This title shall be known as the "Shoreline Master Program ~~of Yakima County, Washington~~ Regulations."
- B. ~~The Shoreline Master Program of Yakima County shall, for the purposes of RCW 36.70A.480 (GMA, Shorelines of the State) be considered a supplement to the Comprehensive Plan of Yakima County.~~ The Shoreline Master Program Regulations shall, for the purposes of 36.70A.480 (GMA and Shorelines of the State) be considered a set of use regulations applying only to shoreline areas as specified in RCW 90.58 (SMA) and WAC 173-26 (State master program approval/amendment procedures and master program guidelines ~~SMP Guidelines~~). These regulations are intended to be substantive legal rules and procedures used to implement the goals and policies of the Master Program (these goals and policies are contained in the City of Yakima Comprehensive Plan, Chapter 10, Section 3 – General Shoreline Planning Sub-element). These regulations shall be applied and interpreted in a manner consistent with the remainder of the Master Program or the Act.

17.01.020 Applicability

Consultant note: We have amended the sections below to be applicable to the SMP only (not to critical areas regulations outside of shoreline jurisdiction); we have removed references to activities we believe are not applicable to the City and UGA. Please also note, we will have a separate section on non-conforming or pre-existing uses in Chapter 17.11.

- A. The provisions of this title shall apply to any new development, construction or use within the ~~unincorporated portion of Yakima County and municipalities in Yakima County~~ the City of Yakima, which have adopted this regional SMP designated as a critical area inside Shoreline jurisdiction, designated as Shoreline jurisdiction and designated as a special flood hazard area under the National Flood Insurance Program. ~~However, this title does not apply to the situations below: except that the Flood Hazard protection provisions of Chapter 5 will continue to apply as determined by the applicability provision in 16D.05.20:~~

~~1. Within critical areas and shorelines designated by this title or amendments that may later be adopted, there may exist lots, structures and uses which were lawfully established before this title was initially adopted, amended or readopted, as provided below, but which would be subsequently prohibited, regulated or restricted under this ordinance. It is the intent of this title to permit these pre-existing legal non-conformities to continue without requirement to change said non-conformity until such time as conformance is required through permits for development in the future. The adoption and amendment dates of the relevant regulations are provided below:~~

- ~~a. Shoreline Master Program adopted September 5, 1974;~~
- ~~b. Shoreline Master Program amended March 26, 1981;~~
- ~~c. Shoreline Master Program amended November 1, 1981;~~
- ~~d. Critical Areas Ordinance adopted July 12, 1994;~~
- ~~e. Critical Areas Ordinance amended October 1, 1995;~~
- ~~f. Flood Hazard Ordinance adopted June 5, 1985.~~

1. Interior building improvements that do not change the use or occupancy are not subject to this title;

2. Exterior structure maintenance activities, including painting and roofing, are not subject to this title, as long as such activities do not expand the existing footprint of the structure or impervious area;

3. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding are not subject to this title;

4. Maintenance of the following existing facilities that do not expand the affected area is not subject to this title: septic tanks (routine cleaning), wells, and individual utility service connections.

~~2. Critical areas on federally owned lands that are outside shoreline jurisdiction are not subject to this title;~~

~~3. Critical areas on federally owned lands within Shoreline jurisdiction in situations that do not have to obtain permits or follow the permit system, as provided in 16D.01.07 (Applicability to Federal Agencies), are not subject to this title;~~

~~4. Forest practices, as defined by this title, carried out under a Washington Department of Natural Resources Forest Practice permit are not subject to this title, except those that involve Shoreline jurisdiction, involve a conversion of forest land to a non-forestry use, involve a conversion option harvest plan, or take place on lands platted after January 1, 1960;~~

~~5. Livestock grazing on publicly owned land, when carried out under an agreement that includes a resource management plan that will be monitored by a public entity is not subject to this title;~~

Changing agricultural crops within an existing farming operation is not considered new development, construction or use, ~~provided that the existing area under agricultural production is not extended further into a vegetative buffer identified under 16D.06.16, and provided that the natural contour of the land subject to this title is not altered by excavation and filling.~~ SMP regulations do apply to the following: 1) new agricultural activities on land not meeting the definition of agricultural land, 2) conversion of agricultural lands to other uses, and 3) other development on agricultural land that does not meet the definition of agricultural activities (e.g. processing plants);

Minor, temporary or transient activities, including those of a recreational nature, that do not alter the environment or require a dedicated staging area, use area, or route are not subject to this title, and including temporary signs (election, sale, rent, etc.);

B. The following subsections guide the determination of applicability of SMP regulations on federal lands:

1. Federal development on federally owned land is not subject to this SMP nor required to obtain a Shoreline permit unless otherwise required by federal law, or unless the state by statute has ceded all regulatory authority over the federal ownership;
2. Federal development on a federally owned lease is not subject to this SMP nor required to obtain a Shoreline permit unless otherwise required by federal law, or unless the state by statute has ceded all regulatory authority over the federal ownership as long as the development is consistent with the purpose of the lease;
3. Development on federally owned land under a federal lease or easement for a non-federal activity is subject to this SMP and must obtain a Shoreline permit; for example, the SMP applies to private activities on federal land such as leases where the private citizen owns the structure but the federal government owns the land;
4. Non-federal development or use on federally owned land is subject to this SMP and must obtain a Shoreline permit;
5. Development on non-federal land is subject to this SMP and must obtain a Shoreline permit, even if it is leased, rented, etc. to the federal government, or it is within the boundaries of federal ownership unless the state by statute has ceded all regulatory authority over the federal ownership.
- ~~8. Critical Areas within the exterior boundaries of the Yakama Nation that are located within the designated Closed Areas or not under County jurisdiction as a result of the Supreme Court decision COUNTY OF YAKIMA et. al. v. CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION (1991) are not subject to this title.~~
- ~~9. Mining, as defined by this title, that is carried out under a Washington Department of Natural Resources reclamation permit is not subject to the geologically hazardous areas provisions of this title for erosion hazard areas, oversteepened slope hazard areas, landslide hazard areas and suspected geologic hazard areas. Other critical areas provisions continue to apply.~~

17.01.030 Findings

Consultant note: Section to be inserted at time of Planning Commission recommendation to Council. Typically, findings would state natural and built environment conditions that illustrate local circumstances. For example, the findings could describe the Yakima Greenway as an important consideration in the SMP. Another factor could be the presence of existing development along manmade lakes. Yet another could be the importance of the Yakima River in terms of flood control and habitat.

17.01.040 Purpose

The purpose of ~~YCC Title 16D~~YMC Title 17 is to establish a single, uniform system of procedures and standards to be applied to development within Shoreline jurisdiction of ~~unincorporated the City of Yakima~~Yakima County and municipalities in Yakima County which have adopted this regional SMP. The SMP regulations are intended to carry out the responsibilities imposed on ~~Yakima County~~the City of Yakima by the Shoreline Management Act (RCW 90.58) and its Administrative Rules (WAC 173-18, WAC 173-20, WAC 173-22, WAC 173-26 and WAC 173-27) insofar as regulations can, and the adoption of these regulations does not remove other responsibilities imposed by the Act. The purposes of the Shoreline Master Program Regulations are to:

- A. Promote reasonable and appropriate use of the shorelines that will protect the public and private interest;
- B. Protect against adverse effects to the public health, the land, its vegetation and wildlife and the waters and their aquatic life within ~~Yakima County~~the City of Yakima;
- C. Protect public rights of navigation;
- D. Recognize and protect private property rights consistent with public interest;
- E. ~~Maintain or re-create~~Promote a high quality of environment along the shorelines;
- F. Preserve and protect fragile natural resources and culturally significant features;
- G. Increase public access to publicly owned areas of the shorelines where increased use levels are desirable;
- H. Protect public and private properties from adverse effects of improper development in hazardous shorelines areas;
- I. Recognize and protect the statewide interest;
- J. Give preference to uses that result in long-term over short-term benefits; and
- K. Provide for no net loss of ecological functions cumulatively from both individual permitted development and individual exempt development.
- Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

17.01.050 Relationship to Other Codes, Ordinances and Plans

- A. All applicable federal, state, and local laws shall apply to properties in the shoreline jurisdiction. At the time of application or initial inquiry, the Shoreline Administrator shall inform the applicant/proponent of other local laws and rules that may be applicable to the project. The responsibility for determining applicable federal, state or special district statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the activity, use, or development in question.
- B. This SMP includes critical areas regulations applicable only in the shoreline jurisdiction, and shall control within shoreline jurisdiction over other City critical area regulations adopted pursuant to the Growth Management Act.
- C. Other rules and regulations, including but not limited to the ~~Yakima County Subdivision Ordinance (YCC Title 14), the Yakima County Zoning Ordinance (YCC Title 15), the Yakima Urban Area Zoning Ordinance (YCC Title 15A), and the Building and Construction Ordinance (YCC Title 13),~~ City of Yakima development regulations addressing subdivision, zoning, building and construction shall remain in full force and effect as they apply to a designated critical area or Shoreline.
- D. Wherever the requirements of ~~YCC Title 16D~~ this Title 17 conflict with the requirements of the applicable Zoning Ordinance, the Subdivision Ordinance or any other lawfully adopted County City rules or regulations, the most restrictive standards shall govern.

17.01.060 Liberal Construction

As provided for in RCW 90.58.900, the Act is exempted from the rule of strict construction; the Act and this SMP shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which they were enacted.

17.01.070 Severability

If any provision of the ordinance codified in this title, or its application to any person or legal entity or circumstances is held to be invalid, the remainder of said ordinance or the application of the provision to other persons or legal entities or circumstances shall not be affected.

17.01.080 Effective Date

The SMP is hereby adopted on the XX date of XX, 2013. This SMP and all amendments thereto shall become effective upon final approval by Ecology.

17.01.090 Definitions

Consultant Note: Definitions are addressed in a separate document as they will continue to evolve frequently as the Draft SMP is prepared.

17.01.100 Shoreline Jurisdiction

Consultant Note: This section is pending. The shoreline jurisdiction is evolving, but in any case follows SMP laws and rules. See prior consultant memos in February and March 2013 meetings.

17.13 ADMINISTRATION AND ENFORCEMENT

Consultant note: This Chapter is all new and is not drawn from the Regional SMP.

17.13.010 Roles and Responsibilities

The City shall administer the Shoreline Master Program (SMP), collectively Title 17 and the associated goals and policies contained in Comprehensive Plan Chapter 10, Section 3, according to the following roles and responsibilities:

- A. **Shoreline Administrator.** The Shoreline Administrator in the City of Yakima is the Community Development Director. The Shoreline Administrator shall have overall administrative responsibility of the SMP. The Shoreline Administrator or his/her designee is hereby vested with the authority to:
 1. Administrate this SMP.
 2. Make field inspections as needed, and prepare or require reports on shoreline permit applications.
 3. Grant or deny exemptions from Shoreline Substantial Development Permit requirements of this SMP.
 4. Authorize, approve or deny Shoreline Substantial Development Permits.
 5. Authorize, approve or deny Shoreline Conditional Use Permits
 6. Make written recommendations to the Hearing Examiner, Planning Commission, or City Council as appropriate.
 7. Advise interested persons and prospective applicants as to the administrative procedures and related components of this SMP.
 8. Collect fees for all necessary permits as provided in City ordinances or resolutions. The determination of which fees are required shall be made by the City.
 9. Make administrative decisions and interpretations of the policies and regulations of this SMP and the Act in accordance with the Yakima Municipal Code.
- B. **SEPA Official.** The responsible SEPA official or his/her designee is authorized to conduct environmental review of all use and development activities subject to this SMP, pursuant to WAC 197-11 and RCW 43.21C. The responsible SEPA official is designated in accordance with the City's SEPA implementation ordinance.
- C. **Hearing Examiner.** The Hearing Examiner shall have the authority to:
 1. Decide on appeals from administrative decisions issued by the Shoreline Administrator of this SMP.
 2. Grant or deny variances from this SMP.
 3. The Hearing Examiner may, at the request of the Shoreline Administrator, receive and examine available information, conduct public hearings and prepare records and reports thereof, and issue recommendations to the council based upon findings and conclusions on applications for shoreline substantial development permits and conditional use permits.
- D. **Planning Commission.** The Planning Commission is vested with the responsibility to review the SMP as part of regular SMP updates required by RCW 90.58.080 as a major element of the City's planning and regulatory program, and make recommendations for amendments thereof to the City Council.

E. City Council. The City Council is vested with authority to:

1. Initiate an amendment to this SMP according to the procedures prescribed in WAC 173-26-100.
2. Adopt all amendments to this SMP, after consideration of the recommendation of the planning commission, where established. Amendments shall become effective upon approval by Ecology.

17.13.020 Interpretation

- A. The City shall make administrative decisions and interpretations of the policies and regulations of this SMP and the Act in accordance with the Yakima Municipal Code.
- B. The City shall consult with Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and 173-26 WAC.
- C. The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The Shoreline Administrator shall give adequate consideration to mitigation measures and other possible methods to prevent undue or unreasonable hardships upon property owners.

17.13.030 Statutory Noticing Requirements

Applicants shall follow the noticing requirements of the City. At a minimum, the City shall provide notice in accordance with WAC 173-27-110, and may provide for additional noticing requirements. Per WAC 173-27-120 the City shall comply with special procedures (public notice timelines, appeal periods, etc.) for limited utility extensions and bulkheads.

The following subsections provide a summary of noticing days. The City shall consult the most current version of WAC 173-27-110 and 120 to confirm the days. In case of conflict state statutes or rules shall control:

- A. Issuance of notice of application. Notice of application shall be provided within fourteen days after the determination of completeness of the application.
- B. Statement of public comment period. The notice of application shall state the public comment period which shall be not less than thirty days following the date of notice of application, unless otherwise specified for limited utility extensions or single family bulkheads below.
- C. Notice of application prior to hearing. If an open record predecision hearing, as defined in RCW 36.70B.020, is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.
- D. Limited utility extension or single-family bulkhead. An application for a Substantial Development Permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of this chapter except that the following time periods and procedures shall be used:
 1. The public comment period shall be twenty days. The notice provided shall state the manner in which the public may obtain a copy of the City's decision on the application no later than two days following its issuance;
 2. The City shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in subsection (2)(a) of this section; and

3. If there is an appeal of the decision to grant or deny the permit to the Hearing Examiner, the appeal shall be finally determined by the Hearing Examiner within thirty days.

Consultant note: In WAC 173-27-120, reference is made to an appeal going to a "local legislative authority". We are investigating this language as it would typically refer to a city council, but most agencies have their hearing examiners address appeals.

17.13.040 Application Requirements

- A. A complete application for a Shoreline Substantial Development, Shoreline Conditional Use, or Shoreline Variance Permit shall contain, at a minimum, the information listed in WAC 173-27-180. In addition, the applicant, including those applying for exemption status, shall provide the following materials:
 1. An assessment of the existing ecological functions and/or processes provided by topographic, physical and vegetation characteristics of the site and any impacts to those functions and/or processes, to accompany development proposals, provided that proposals for single-family residences, as long as they meet the exemption criteria, shall be exempt from this requirement if proposal is located outside required buffers. When the project results in adverse impacts to ecological function and/or processes, a mitigation plan must be provided that describes how proposed mitigation compensates for the lost function or process.
 2. Site plan or division of land depicting to scale the location of buildable areas, existing and proposed impervious surfaces (building(s), accessory structures, driveways), and allowed landscaping and yards (including proposed water access trails, view corridors, wildfire defensible space, if applicable), general location of utilities, well and septic system, if applicable and location of storage and staging of materials and equipment during construction. Plans shall show area calculations of each feature.
 3. The location of any mapped channel migration zone floodplain, and/or floodway boundary and critical Areas, if known, and respective setback/buffer areas on and within 250 feet of the vicinity of the project site and all applicable buffers.
 4. Where a view analysis is required per WAC 173-27-180 it shall address the following:
 - a. The analysis shall include vacant existing parcels of record as well as existing structures. Vacant parcels of record shall be assumed to be developed with structures complying with the applicable regulations of the City and the maximum height limitation allowed under the SMP.
 - b. The view corridor analysis shall include residential buildings or public properties located outside of the shoreline jurisdiction if it can be clearly demonstrated that the subject property has significant water views.
 - c. The analysis shall include vacant existing parcels of record as well as existing structures. Vacant parcels of record shall be assumed to be developed with structures complying with the applicable regulations of the City and the maximum height limitation allowed under the SMP.
 - d. The view corridor analysis shall include residential buildings or public properties located outside of the shoreline jurisdiction if it can be clearly demonstrated that the subject property has significant water views.

- B. The Shoreline Administrator may vary or waive these additional application requirements according to administrative application requirements on a case by case basis, but all applications for a substantial development, conditional use, or variance permit shall contain the information found in WAC 173-26-180.
- C. The Shoreline Administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other City requirements, and the provisions of this Title.

17.13.050 Exemptions from Shoreline Substantial Development Permits

- A. The City shall exempt from the Shoreline Substantial Development Permit requirement the shoreline developments listed in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515.
- B. Letters of exemption shall be issued when a letter of exemption is required by the provisions of WAC 173-27-050. Otherwise the exemption status shall be documented in the project application file.

17.13.060 Shoreline Substantial Development Permits

- A. A Shoreline Substantial Development Permit shall be required for all development of shorelines, unless the proposal is specifically exempt per Section 17.13.050.
- B. A substantial development permit shall be granted only when the development proposed is consistent with:
 - 1. The policies and procedures of the SMA;
 - 2. The provisions of WAC 173-27;
 - 3. Chapter 10, Section 3 of the City of Yakima Comprehensive Plan; and
 - 4. This Title 17.
- C. The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act and this SMP. Additionally, nothing shall interfere with the City's ability to require compliance with all other applicable laws and plans.

17.13.070 Shoreline Conditional Use Permits

- A. This section provides procedures and criteria guiding the review of shoreline conditional use permits, which require careful review to ensure the use can be properly installed and operated in a manner that meets the goals of the Act and this Program in accordance with any needed performance standards. After a Shoreline Conditional Use application has been approved by the City, the City shall submit the permit to Ecology for Ecology's approval, approval with conditions or denial. Ecology shall review the file, in accordance with WAC 173-27-200.
- B. Uses specifically classified or set forth in this Shoreline Master Program as conditional uses shall be subject to review and condition by the City Hearing Examiner and by the Department of Ecology.
- C. Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this Section and the requirements for conditional uses contained in this SMP.
- D. Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.

- E. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - 1. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - 2. That the proposed use will not interfere with the normal public use of public shorelines;
 - 3. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP;
 - 4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - 5. That the public interest suffers no substantial detrimental effect.
- F. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- G. In authorizing a conditional use, special conditions may be attached to the permit by the City or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMA and this SMP.
- H. Nothing shall interfere with the City's ability to require compliance with all other applicable plans and laws.

17.13.080 Shoreline Variance Permits

- A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Shoreline Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Shoreline Master Program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.
- B. After a Shoreline Variance application has been approved by the City, the City shall submit the permit to Ecology for Ecology's approval, approval with conditions or denial. Ecology shall review the file in accordance with WAC 173-27-200.
 - 1. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
 - 2. Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in the SMP precludes, or significantly interferes with, reasonable use of the property;

- b. That the hardship described in criterion "a" of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;
 - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP and will not cause adverse impacts to the shoreline environment;
 - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e. That the variance requested is the minimum necessary to afford relief; and
 - f. That the public interest will suffer no substantial detrimental effect.
3. Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
- a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
 - b. That the proposal is consistent with the criteria established under Regulation B.2 above; and
 - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
- C. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

17.13.090 Duration of Permits

Time duration requirements for Shoreline Substantial Development, Shoreline Variance, and Shoreline Conditional Use Permits shall be consistent with the following provisions.

- A. General provisions. The time requirements of this section shall apply to all Shoreline Substantial Development Permits and to any development authorized pursuant to a Shoreline Conditional Use Permit or Shoreline Variance authorized by this Chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of this SMP and this Chapter, the City may adopt different time limits from those set forth in Subsections B and C of this section as a part of an action on a Shoreline Substantial Development Permit.

- B. Commencement. Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance. Commencement means taking the action on the shoreline project for which the permit was granted shall begin. For example, beginning actual construction or entering into binding agreements or contractual obligations to undertake a program of actual construction. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed with a complete extension application submittal before the expiration date and notice of the proposed extension is given to parties of record on the Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance and to Ecology.
- C. Termination. Authorization to conduct development activities shall terminate five years after the effective date of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance, and to Ecology.
- D. Effective date. The effective date of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance shall be the date of receipt as provided in RCW 90.58.140(6). The permit time periods in subsections B and C of this section do not include the time during which a use or activity was not actually pursued due to pending administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. The applicant shall be responsible for informing the City of the pendency of other permit applications filed with agencies other than the City and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given by the applicant to the City prior to the date of the last action by the City to grant permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the City, and actions under other City development regulations, the date of the last action by the City shall be the effective date.
- E. Revisions. Revisions to permits may be authorized after original permit authorization has expired, provided that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
- F. Notification to Ecology. The City shall notify Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

17.13.100 Initiation of Development

- A. Amortization to begin construction. Each permit for a Substantial Development, Shoreline Conditional Use or Shoreline Variance, issued by the City shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of receipt with Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one (21) from the date of receipt of the decision, except as provided in RCW 90.58.140 (5)(a) and (b). The date of receipt for a Substantial Development Permit means that date the applicant receives written notice from Ecology that it has received the decision. With regard to a permit for a Shoreline Variance or a Shoreline Conditional Use, date of receipt means the date a City or applicant receives the written decision of Ecology.
- B. Forms. Permits for Substantial Development, Shoreline Conditional use, or Shoreline Variance may be in any form prescribed and used by the City including a combined permit application form. Such forms will be supplied by the City.
- C. Data sheet. A permit data sheet shall be submitted to Ecology with each shoreline permit. The permit data sheet form shall be consistent with WAC 173-27-990.
- D. Construction Prior to Expiration of Appeal Deadline. Construction undertaken pursuant to a permit is at the applicant's own risk until the expiration of the appeals deadline.

17.13.110 Review Process

- A. After the City's approval of a conditional use or variance permit, the City shall submit the permit to the department for Ecology's approval, approval with conditions, or denial. Ecology shall render and transmit to the City and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the City pursuant to WAC 173-27-110.
- B. Ecology shall review the complete file submitted by the City on conditional use and variance permits and any other information submitted or available that is relevant to the application. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit or variance on consistency with the policy and provisions of the SMA and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170.
- C. The City shall provide appropriate notification of the Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

17.13.120 Appeals

- A. Administrative review decisions by the Administrator, based on a provision of this SMP, may be the subject of an appeal to the Hearing Examiner by any aggrieved person. Such appeals shall be an open record hearing before the Hearing Examiner.
- B. Appeals of exemptions are allowed only for exemptions where a letter is required pursuant to Section 17.13.050, of this SMP
- C. Appeals must be submitted within fourteen (14) calendar days after the date of decision or written interpretation together with the applicable appeal fee. Appeals submitted by the applicant or aggrieved person shall contain:

1. The decision or interpretation being appealed, including the file number reference and the specific objections in the decision document;
 2. The name and address of the appellant and his/her interest(s) in the application or proposed development;
 3. The specific reasons why the appellant believes the decision or interpretation to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision or interpretation is erroneous;
 4. The specific relief sought by the appellant; and
 5. The appeal fee established by the City.
- D. Per WAC 173-27-120 the City shall comply with special procedures for limited utility extensions and bulkheads. If there is an appeal of the decision to grant or deny the permit to the Hearing Examiner, the appeal shall be finally determined by the Hearing Examiner within thirty days.
- E. Appeals to the Shoreline Hearings Board of a final decision on a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Shoreline Variance, or a decision on an appeal of an administrative action, may be filed by the applicant or any aggrieved party pursuant to RCW 90.58.180 within thirty (30) days of receipt of the final decision by the City or by Ecology as provided for in RCW 90.58.140(6).

17.13.130 Amendments to Permits

- A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this SMP, and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
- B. When an applicant seeks to revise a permit, the City shall request from the applicant detailed plans and text describing the proposed changes. Proposed changes must be within the scope and intent of the original permit, otherwise a new permit may be required.
- C. If the City determines that the proposed changes are within the scope and intent of the original permit, and are consistent with this SMP and the Act, the City may approve a revision.
- D. "Within the scope and intent of the original permit" means all of the following:
1. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%) from the provisions of the original permit, whichever is less;
 2. Ground area coverage and height may be increased a maximum of ten percent (10%) from the provisions of the original permit;
 3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of this SMP except as authorized under a Shoreline Variance granted as the original permit or a part thereof;
 4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with this SMP;
 5. The use authorized pursuant to the original permit is not changed; and
 6. No adverse environmental impact will be caused by the project revision.

- E. The revision approval, including the revised site plans and text clearly indicating the authorized changes, and the final ruling on consistency with this section shall be filed with Ecology. In addition, the City shall notify parties of record of their action.
- F. If the revision to the original permit involves a Shoreline Conditional Use Permit or Shoreline Variance, the City shall submit the revision to Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Ecology shall render and transmit to the City and the applicant its final decision within fifteen (15) days of the date of Ecology's receipt of the submittal from the City. The City shall notify parties of record of Ecology's final decision.
- G. The revised permit is effective immediately upon final decision by the City or, when appropriate per Subsection F, upon final action by Ecology. Construction undertaken pursuant to a permit is at the applicant's own risk until the expiration of the appeals deadline.
 - 1. Filing. Appeals of a revised permit shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one (21) days from the date of receipt of the City's action by Ecology or, when appropriate under Shoreline Variances or Conditional Uses, the date Ecology's final decision is transmitted to the City and the applicant.
 - 2. Basis of appeals. Appeals shall be based only upon contentions of noncompliance with the provisions of Subsections A and B. Appeals shall be based on the revised portion of the permit.
 - 3. Risk. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline.
 - 4. Scope of decision. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

17.13.140 SMP Amendments

- A. This Shoreline Master Program carries out the policies of the Shoreline Management Act for the City. It shall be reviewed and amended as appropriate in accordance with the review periods required in the Act and in order to:
 - 1. To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and
 - 2. To assure consistency of the master program with the City's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.
- B. This SMP and all amendments thereto shall become effective immediately upon final approval and adoption by Ecology.
- C. The SMP may be amended annually or more frequently as needed pursuant to the Growth Management Act, RCW 36.70A.130(2)(a)(iii).
- D. Initiation. Future amendments to this Shoreline Management Plan may be initiated either by any person, resident, property owner, business owner, governmental or non-governmental agency, Shoreline Administrator, Planning Commission, or City Council as appropriate.

- E. Application. Applications for shoreline master program amendments shall specify the changes requested and any and all reasons therefore. Applications shall be made on forms specified by the City. Such applications shall contain information specified in the City's procedures for Comprehensive Plan and development regulation amendments pursuant to RCW 36.70A, the Growth Management Act, and information necessary to meet minimum public review procedures in Subsection F.
- F. Public Review Process – Minimum Requirements. The City shall accomplish the amendments in accordance with the procedures of the Shoreline Management Act, Growth Management Act, and implementing rules including, but not limited to, RCW 90.58.080, WAC 173-26-100, RCW 36.70A.106 and 130, and Part Six, Chapter 365-196 WAC.
- G. Roles and Responsibilities. Proposals for amendment of the Shoreline Management Plan shall be heard by the Planning Commission. After conducting a hearing and evaluating testimony regarding the application, including a recommendation from the Shoreline Administrator, the Planning Commission shall submit its recommendation to the City Council, who shall approve or deny the proposed amendment.
- H. Finding. Prior to approval, the City shall make a finding that the amendment would accomplish #1 or #2, and must accomplish #3:
 - 1. The proposed amendment would make this Program more consistent with the Act and/or any applicable Department of Ecology Guidelines;
 - 2. The proposed amendment would make this Program more equitable in its application to persons or property due to changed conditions in an area;
 - 3. This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the effective date of this SMP [insert date].
- I. After approval or disapproval of a Program amendment by the Department of Ecology as provided in RCW 90.58.090, Ecology shall publish a notice that the Program amendment has been approved or disapproved by Ecology pursuant to the notice publication requirements of RCW 36.70A.290.

17.13.150 Enforcement

The City shall apply 173-27 WAC Part II, Shoreline Management Act Enforcement, to enforce the provisions of this SMP whenever a person has violated any provision of the act or any master program or other regulation promulgated under the Act.

17.13.160 Monitoring

- A. The City will track all shoreline permits and exemption activities to evaluate whether the SMP is achieving no net loss of shoreline ecological functions. Activities to be tracked using the City's permit system include development, conservation, restoration and mitigation, such as:
 - 1. New shoreline development
 - 2. Shoreline Variances and the nature of the variance
 - 3. Compliance issues
 - 4. Net changes in impervious surface areas, including associated stormwater management
 - 5. Net changes in fill or armoring
 - 6. Net change in linear feet of flood hazard structures

7. Net changes in vegetation (area, character)
- B. Using the information collected Subsection A, a no net loss report shall be prepared every eight years as part of the City's Shoreline Master Program evaluation or Comprehensive Plan Amendment process. Should the no net loss report show degradation of the baseline condition documented in the City's Shoreline Analysis Report changes to the SMP and/or Shoreline Restoration Plan shall be proposed at the time of the eight-year update to prevent further degradation and address the loss in ecological functions.

EXCERPTS FROM ECOLOGY'S SHORELINE MASTER PROGRAM SUBMITTAL CHECKLIST

Washington Department of Ecology will use a Submittal Checklist based on the Shoreline Management Act (RCW 90.58.020) and the Shoreline Master Program Guidelines (WAC 173-26) to help them evaluate the SMP's compliance with the Act and the Guidelines. The following is an excerpt from that Checklist, including the sections on relevant Environment Designations, General Policies and Regulations, Shoreline Uses, and Shoreline Modifications. See

<https://fortress.wa.gov/ecy/publications/summarypages/wac17326.html> for complete SMP Guidelines. See <http://www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox/process/checklist.html> for the complete checklist.

This should be a useful reference during Planning Commission review of the City's draft SMP regulations.

STATE RULE (WAC) REQUIREMENTS
SMP CONTENTS
Any goals adopted as part of the SMP are consistent with the SMA. <i>(Note: Goal statements are not required.)</i>
<p>Policies (A) are consistent with guidelines and policies of the SMA; (B) address elements of RCW 90.58.100; (C) include policies for environment designations, accompanied by a map or physical description of designation boundaries in sufficient detail to compare with comprehensive plan land use designations; and (D) are consistent with constitutional and other legal limitations on regulation of private property. WAC 173-26-191(2)(a)(i).</p> <p>SMP implements preferred use policies of the SMA. WAC 173-26-201(2)(d).</p>
<p>Regulations: (A) are sufficient in scope and detail to ensure the implementation of the SMA, SMP guidelines, and SMP policies; (B) include environment designation regulations; (C) include general regulations, use regulations that address issues of concern in regard to specific uses, and shoreline modification regulations; and, (D) are consistent with constitutional and other legal limitations on the regulation of private property. WAC 173-26-191(2)(a)(ii).</p>
<p>Height Limitation: SMP prohibits buildings and structures >35 feet in height obstructing views of residences, with exceptions. RCW 90.58.320.</p>
ENVIRONMENT DESIGNATIONS
<p>Each environment designation includes: Purpose statements, classification criteria, management policies, and regulations (types of shoreline uses permitted, conditionally permitted, and prohibited; building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards). WAC 173-26-211(2)(4).</p>
<p>An up-to-date map accurately depicting environment designation boundaries. If necessary, include common boundary descriptions. WAC 173-26-211(2)(b); WAC 173-26-110(3).</p>
<p>Statement that undesigned shorelines are automatically assigned a conservancy environment designation. WAC 173-26-211(2)(e).</p>
AQUATIC ENVIRONMENT WAC 173-26-211(5)(c)
<p>Designation criteria: Areas waterward of the ordinary high-water mark (OHWM). WAC 173-26-211(5)(c)(iii).</p>
<p>New over-water structures: Allowed only for water-dependent uses, public access, or ecological restoration. WAC 173-26-211(5)(c)(ii)(A).</p>

STATE RULE (WAC) REQUIREMENTS
Limited to the minimum necessary to support the structure's intended use. WAC 173-26-211(5)(c)(ii)(B).
Multiple use of over-water facilities encouraged. WAC 173-26-211(5)(c)(ii)(C).
Location and design of all developments and uses required to: <ul style="list-style-type: none"> Minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration. WAC 173-26-211(5)(c)(ii)(D). Prevent water quality degradation and alteration of natural hydrographic conditions. WAC 173-26-211(5)(c)(ii)(F).
Uses that adversely impact ecological functions of critical saltwater and freshwater habitats limited (except where necessary for other SMA objectives, and then only when their impacts are mitigated). WAC 173-26-211(5)(c)(ii)(E).
HIGH-INTENSITY ENVIRONMENT WAC 173-26-211(5)(d)
Designation criteria: Areas within incorporated municipalities, "UGAs," and "rural areas of more intense development" (see RCW 36.70A.070) that currently support or are planned for high-intensity water-dependent uses. WAC 173-26-211(5)(d)(iii).
Priority given first to water dependent uses, then to water-related and water-enjoyment uses. New non-water oriented uses prohibited except as part of mixed use developments, or where they do not conflict with or limit opportunities for water oriented uses or where there is no direct access to the shoreline. WAC 173-26-211(5)(d)(ii)(A).
Full use of existing urban areas required before expansion of intensive development allowed. WAC 173-26-211(5)(d)(ii)(B).
New development does not cause net loss of shoreline ecological functions. Environmental cleanup and restoration of the shoreline to comply with relevant state and federal laws assured. WAC 173-26-211(5)(d)(ii)(C).
Visual and physical public access required where feasible. Sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers to achieve aesthetic objectives. WAC 173-26-211(5)(d)(ii)(D) and (E).
URBAN CONSERVANCY ENVIRONMENT WAC 173-26-211(5)(e)
Designation criteria: Areas within incorporated municipalities, UGAs, and "rural areas of more intense development" not suitable for water-dependent uses but suitable for water-related or water-enjoyment uses, are flood plains, have potential for ecological restoration, retain ecological functions, or have potential for development that incorporates ecological restoration. WAC 173-26-211(5)(e)(iii).
Allowed uses are primarily those that preserve natural character of area, promote preservation of open space, floodplain or sensitive lands, or are appropriate for restoration. WAC 173-26-211(5)(e)(ii)(A). Priority given to water oriented uses over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water dependent uses given highest priority. WAC 173-26-211(5)(e)(ii)(D). For SMPs that allow mining, see WAC 173-26-241(3)(h).
Standards for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications that ensure new development does not result in a net loss of shoreline ecological functions or degrade other shoreline values. WAC 173-26-211(5)(e)(ii)(B).
Public access and recreation required where feasible and ecological impacts are mitigated. WAC 173-26-

STATE RULE (WAC) REQUIREMENTS

211(5)(e)(ii)(C).

SHORELINE RESIDENTIAL ENVIRONMENT WAC 173-26-211(5)(f)

Designation criteria: Areas within incorporated municipalities, UGAs, "rural areas of more intense development", and "master planned resorts" (see RCW 36.70A.360) that are predominantly residential development or planned and platted for residential development. WAC 173-26-211(5)(f)(iii).

Standards for density or minimum frontage width, setbacks, buffers, shoreline stabilization, critical areas protection, and water quality protection assure no net loss of ecological function. WAC 173-26-211(5)(f)(ii)(A).

Multifamily and multi-lot residential and recreational developments provide **public access** and joint use for community recreational facilities. WAC 173-26-211(5)(f)(ii)(B).

Access, utilities, and public services required to be available and adequate to serve existing needs and/or planned future development. WAC 173-26-211(5)(f)(ii)(C).

Commercial development limited to water oriented uses. WAC 173-26-211(5)(f)(ii)(D).

GENERAL POLICIES AND REGULATIONS

Moratoria. Under the authority of RCW 90.58.590, local governments may adopt moratoria or other interim official controls lasting up to six months.

These controls may be extended twice. *These official controls are not adopted as part of a shoreline master program.*

Public hearings, notice to Ecology, and other requirement are set forth in RCW 90.58.590.

ARCHAEOLOGICAL AND HISTORICAL RESOURCES WAC 173-26-221(1)

Developers and property owners required to **stop work** and notify the local government, state office of archaeology and historic preservation, and affected Indian tribes if archaeological resources are uncovered during excavation. WAC 173-26-221(1)(c)(i).

Permits issued in areas documented to contain archaeological resources require **site inspection** or evaluation by a professional archaeologist in coordination with affected Indian tribes. WAC 173-26-221(1)(c)(ii).

CRITICAL AREAS WAC 173-26-221(2)

Policies and regulations for critical areas (designated under GMA) located within shorelines of the state that

- Are consistent with SMP guidelines
- Provide a level of protection equal to critical areas within shorelines that satisfy the **no net loss of ecological functions** requirement, as provided by the local government's existing critical area regulations adopted pursuant to the GMA for comparable areas other than shorelines. WAC 173-26-221(2)(a) and (c).

Planning objectives are for protection *and restoration* of degraded ecological functions and ecosystem-wide processes. **Regulatory provisions** *protect* existing ecological functions and ecosystem-wide processes. WAC 173-26-221(2)(b)(iv).

Critical area provisions **promote human uses and values**, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions. WAC 173-26-221(2)(b)(v).

If SMP includes **optional expansion** of jurisdiction: Clear description of the inclusion of any land necessary for buffers of critical areas that occur within shorelines of the state, accurately depicting new SMP jurisdiction consistent with RCW 90.58.030(2)(f)(ii) and WAC 173-26-221(2)(a).

STATE RULE (WAC) REQUIREMENTS
WETLANDS WAC 173-26-221(2)(c)(i)
Wetlands definition is consistent with WAC 173-22.
Provisions requiring wetlands delineation method are consistent with WAC 173-22-035.
Regulations address all uses and activities listed in WAC 173-26-221(2)(c)(i)(A) to achieve no net loss of wetland area and functions, including lost time when the restoration does not perform the functions. WAC 173-26-221(2)(c)(i)(A) + (C).
Wetlands rating or categorization system is based on rarity, irreplaceability, and/or sensitivity to disturbance of a wetland and the functions the wetland provides. Use Ecology Rating System or regionally specific, scientifically based method. WAC 173-26-221(2)(c)(i)(B)]
Wetland Buffer requirements are adequate to ensure wetland functions are protected and maintained in the long-term, taking into account ecological functions of the wetland, characteristics of the buffer, and potential impacts associated with adjacent land uses. WAC 173-26-221(2)(c)(i)(B). Wetland buffer widths assume a naturally vegetated state; wider buffers or a revegetation plan may be needed if buffer is unvegetated or sparsely vegetated.
Wetland mitigation requirements are consistent with WAC 173-26-201(2)(e) and are based on the wetland rating or other scientifically valid means demonstrating replacement of all functions lost (hydrologic, habitat, and water quality). WAC 173-26-221(2)(c)(i)(E) and (F).
Compensatory mitigation allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible. Compensatory mitigation requirements include (I) replacement ratios; (II) Performance standards for evaluating success; (III) long-term monitoring and reporting procedures; and (IV) long-term protection and management of compensatory mitigation sites. WAC 173-26-221(2)(c)(i)(F). Compensatory mitigation requirements are consistent with preference for "in-kind and nearby" replacement, and include requirement for watershed plan if off-site mitigation is proposed. WAC 173-173-26-201(2)(e)(B).
GEOLOGICALLY HAZARDOUS AREAS WAC 173-26-221(2)(c)(ii)
Prohibition of new development and creation of new lots that would: Cause foreseeable risk from geological conditions during the life of the development. WAC 173-26-221(2)(c)(ii)(B); Require structural shoreline stabilization over the life of the development. (Exceptions allowed where stabilization needed to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result.) WAC 173-26-221(2)(c)(ii)(C).
New stabilization structures for existing primary residential structures allowed only where no alternatives (including relocation or reconstruction of existing structures), are feasible, and less expensive than the proposed stabilization measure, and then only if no net loss of ecological functions will result. WAC 173-26-221(2)(c)(ii)(D).
CRITICAL FRESHWATER HABITATS WAC 173-26-221(2)(c)(iv)
Requirements that ensure new development within stream channel, channel migration zone, wetlands, floodplain, hyporheic zone, does not cause a net loss of ecological functions. WAC 173-26-221(2)(c)(iv)(C)(I) and WAC 173-26-221(2)(c)(iv)(B)(II).
Authorization of appropriate restoration projects is facilitated. WAC 173-26-221(2)(c)(iv)(C)(III).
Regulations protect hydrologic connections between water bodies, water courses, and associated wetlands.

STATE RULE (WAC) REQUIREMENTS
WAC 173-26-221(2)(c)(iv)(C)(IV).
FLOOD HAZARD REDUCTION WAC 173-26-221(3)
New development within the channel migration zone or floodway limited to uses and activities listed in WAC 173-26-221(3)(b) and (3)(c)(i).
New structural flood hazard reduction measures allowed only: <ul style="list-style-type: none"> Where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished; Landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis. WAC 173-26-221(3)(c)(ii) & (iii).
New publicly funded dikes or levees required to dedicate and improve public access (see exceptions). WAC 173-26-221(3)(c)(iv).
Removal of gravel for flood control allowed only if biological and geomorphological study demonstrates a long-term benefit to flood hazard reduction, no net loss of ecological functions, and extraction is part of a comprehensive flood management solution. WAC 173-26-221(3)(c)(v).
PUBLIC ACCESS WAC 173-26-221(4)
Applicability: Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. WAC 173-26-221(4)(d)(i). For S of SWS the SMP should identify and evaluate all publicly owned shoreline parcels and their suitability for public access.
Policies and regulations protect and enhance both physical and visual access . WAC 173-26-221(4)(d)(i).
Public entities are required to incorporate public access measures as part of each development project, unless access is incompatible with safety, security, or environmental protection. WAC 173-26-221(4)(d)(ii).
Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required [with certain exceptions].
Maximum height limits, setbacks, and view corridors minimize impacts to existing views from public property or substantial numbers of residences. WAC 173-26-221(4)(d)(iv); RCW 90.58.320.
VEGETATION CONSERVATION (CLEARING AND GRADING) WAC 173-26-221(5)
Vegetation standards implement the principles in WAC 173-26-221(5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. WAC 173-26-221(5)(c).
Selective pruning of trees for safety and view protection is allowed and removal of noxious weeds is authorized. WAC 173-26-221(5)(c).
WATER QUALITY WAC 173-26-221(6)
Provisions protect against adverse impacts to water quality and storm water quantity and ensure mutual consistency between SMP and other regulations addressing water quality. WAC 173-26-221(6).
SHORELINE MODIFICATIONS
SMP: (a) allows structural shoreline modifications only where demonstrated to be necessary to support or

STATE RULE (WAC) REQUIREMENTS

protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for mitigation or enhancement;

(b) limits shoreline modifications in number and extent;

(c) allows only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed;

(d) gives preference to those types of shoreline modifications that have a lesser impact on ecological functions. Policies promote "soft" over "hard" shoreline modification measures

(f) incorporates all feasible measures to protect ecological shoreline functions and ecosystem-wide processes as modifications occur;

(g) requires mitigation sequencing.

WAC 173-26-231(2); WAC 173-26-231(3)(a)(ii) and (iii);

SHORELINE STABILIZATION WAC 173-26-231(3)(a)

Definition: structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. WAC 173-26-231(3)(a)(i).

Definition of new stabilization measures include enlargement of existing structures. WAC 173-26-231(3)(a)(iii)(C), last bullet; WAC 173-26-231(3)(a)(iii)(B)(I), 5th bullet).

Standards setting forth circumstances under which shoreline alteration is permitted, and for the design and type of protective measures and devices. WAC 173-26-231(3)(a)(ii).

New development (*including newly created parcels*) required to be designed and located to prevent the need for future shoreline stabilization, based upon geotechnical analysis.

New development on steep slopes and bluffs required to be set back to prevent need for future shoreline stabilization during life of the project, based upon geotechnical analysis.

New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited. WAC 173-26-231(3)(a)(iii)(A).

New structural stabilization measures are not allowed except when necessity is demonstrated. Specific requirements for *how to demonstrate need* are established for:

- (I) existing primary structures;
- (II) new non-water-dependent development including single family residences;
- (III) water-dependent development; and
- (IV) ecological restoration/toxic clean-up remediation projects. WAC 173-26-231(3)(a)(iii)(B)

Replacement of existing stabilization structures is based on demonstrated need. Waterward encroachment of replacement structure is allowed only for residences occupied prior to January 1, 1992, Or for soft shoreline stabilization measures that provide restoration of ecological functions. WAC 173-26-231(3)(a)(iii)(C).

Geotechnical reports prepared to demonstrate need include estimates of rate of erosion and urgency (damage within 3 years) and evaluate alternative solutions. WAC 173-26-231(3)(a)(iii)(D).

Shoreline stabilization structures are limited to the **minimum size** necessary. WAC 173-26-231(3)(a)(iii)(E).

Public access required as part of publicly financed shoreline erosion control measures. WAC 173-26-231(3)(a)(iii)(E).

Impacts to sediment transport required to be avoided or minimized. WAC 173-26-231(3)(a)(iii)(E).

STATE RULE (WAC) REQUIREMENTS**PIERS AND DOCKS WAC 173-26-231(3)(b)****New piers and docks:**

- Allowed only for water-dependent uses or public access
- Restricted to the minimum size necessary to serve a proposed water-dependent use.
- Permitted only when specific need is demonstrated (except for docks accessory to single-family residences).

Note: Docks associated with single family residences are defined as water dependent uses provided they are designed and intended as a facility for access to watercraft. WAC 173-26-231(3)(b).

When permitted, **new residential development** of more than two dwellings is required to provide joint use or community docks, rather than individual docks. WAC 173-26-231(3)(b)

Design, construction & placement of piers, docks, mooring buoys, boat lifts, boat ramps, marine railways, and float plane facilities are required to avoid, minimize and mitigate for impacts to ecological processes and functions and be constructed of approved materials. WAC 173-26-231(3)(b).

FILL WAC 173-26-231(3)(c)

Definition of "fill" consistent with WAC 173-26-020(14).

Location, design, and construction of all fills protect ecological processes and functions, including channel migration. WAC 173-26-231(3)(c).

Fill **waterward of the OHWM** allowed only by shoreline conditional use permit [except ecological restoration], for:

- Water-dependent use;
- Public access;
- Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
- Disposal of dredged material in accordance with DNR Dredged Material Management Program;
- Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline (if alternatives to fill are shown not feasible);
- Mitigation action, environmental restoration, beach nourishment or enhancement project. WAC 173-26-231(3)(c).

BREAKWATERS, JETTIES, AND WEIRS WAC 173-26-231(3)(d)

Structures **waterward of the ordinary high-water mark** allowed only for water-dependent uses, public access, shoreline stabilization, or other specific public purpose. WAC 173-26-231(3)(d).

Shoreline conditional use permit required for all structures except protection/restoration projects. WAC 173-26-231(3)(d).

Protection of critical areas and appropriate mitigation required. WAC 173-26-231(3)(d).

DREDGING WAC 173-26-231(3)(f)

Dredging and dredge material disposal **avoids or minimizes** significant ecological impacts. Impacts which cannot be avoided are mitigated. WAC 173-26-231(3)(f).

New development siting and design avoids the need for new and maintenance dredging. WAC 173-26-

STATE RULE (WAC) REQUIREMENTS

231(3)(f).

Dredging to establish, expand, relocate or reconfigure navigation channels allowed only where needed to accommodate existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. WAC 173-26-231(3)(f).

Maintenance dredging of established navigation channels and basins restricted to maintaining previously dredged and/or existing authorized location, depth, and width. WAC 173-26-231(3)(f).

Dredging for fill materials prohibited except for projects associated with MTCA or CERCLA habitat restoration, or any other significant restoration effort approved by a shoreline CUP. Placement of fill must be *waterward* of OHWM. WAC 173-26-231(3)(f).

Uses of dredge material that benefits shoreline resources are addressed. If applicable, addressed through implementation of regional interagency dredge material management plans or watershed plan. WAC 173-26-231(3)(f).

Disposal within river channel migration zones discouraged, and in limited instances when allowed, require CUP. (Note: not intended to address discharge of dredge material into the flowing current of the river or in deep water within the channel where it does not substantially affect the geo-hydrologic character of the channel migration zone). WAC 173-26-231(3)(f).

SHORELINE HABITAT AND NATURAL SYSTEMS ENHANCEMENT WAC 173-26-231(3)(g)

Provisions that **foster habitat and natural system enhancement projects**, provided the primary purpose is restoration of the natural character and functions of the shoreline, and only when consistent with implementation of the restoration plan developed pursuant to WAC 173-26-201(2)(f).

Application For Relief option from expansion of SMA jurisdiction by shoreline restoration projects. RCW 90.58.580.

SPECIFIC SHORELINE USES**AGRICULTURE WAC 173-26-241(3)(a)**

Use of agriculture related **terms** is consistent with the specific meanings provided in RCW 90.58.030 and .065.

Provisions address **new agricultural activities**, conversion of agricultural lands to other uses, and other development not meeting the definition of agricultural activities.

Provisions assure that development in support of agricultural uses is: (A) consistent with the environment designation; and (B) located and designed to assure no net loss of ecological functions and not have a significant adverse impact on other shoreline resources and values. WAC 173-26-241(3)(a)(ii) & (v).

Shoreline **substantial development permit** is required for all agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv).

Conversion of agricultural land to non-agricultural uses is consistent with the environment designation, and regulations applicable to the proposed use do not result in a net loss of ecological functions. WAC 173-26-241(3)(a)(vi).

AQUACULTURE WAC 173-26-241(3)(b)

Definition of aquaculture consistent with WAC 173-26-020(6) and -241(3)(b)(i)(A).

Aquaculture is defined as **dependent on the use of the water area** and, when consistent with control of pollution and prevention of damage to the environment, is a **preferred use of the water area**. WAC 173-26-

STATE RULE (WAC) REQUIREMENTS

241(3)(b)(i)(A).

SMP recognizes that potential locations for aquaculture are restricted, technology associated with some forms of present-day aquaculture is still in its formative stages and experimental, and recognizes the need for some latitude in the development of this use as well as its potential impact on existing uses and natural systems. WAC 173-26-241(3)(b)(i)(B).

General ecological siting considerations: Provisions require **consideration of local ecological conditions** and providing limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions. WAC 173-26-241(3)(b)(i)(A).

Aquaculture is not permitted in areas where it would result in a **net loss of ecological functions or adversely impact eelgrass and/or macroalgae**. Impacts to ecological functions shall be **mitigated** consistent with the mitigation sequence. Aquacultural facilities should be **designed and located so as not to spread disease to native aquatic life, or establish new nonnative species** which cause significant ecological impacts. WAC 173-26-241(3)(b)(i)(C).

Aquaculture is not permitted in areas where it would significantly **conflict with navigation and other water-dependent uses**. WAC 173-26-241(3)(b)(i)(C).

Aquacultural facilities should not significantly impact the **aesthetic qualities** of the shoreline. WAC 173-26-241(3)(b)(i)(C).

BOATING FACILITIES WAC 173-26-241(3)(c)

Definition: Boating facility standards do not apply to docks serving four or fewer SFRs. WAC 173-26-241(3)(c).

Boating facilities **restricted to suitable locations**. WAC 173-26-241(3)(c)(i).

Provisions ensuring **health, safety, and welfare requirements** are met. WAC 173-26-241(3)(c)(ii)

Provisions to avoid or mitigate **aesthetic impacts**. See WAC 173-26-241(3)(c)(iii).

Public access required in new boating facilities. WAC 173-26-241(3)(c)(iv). [WAC actually says *new marinas*, not *new boating facilities*]

Impacts of **live-aboard vessels** are limited. WAC 173-26-241(3)(c)(v).

Provisions assuring no net loss of ecological functions as a result of development of boating facilities while providing public recreational opportunities. WAC 173-26-241(3)(c)(vi).

Navigation rights are protected. WAC 173-26-241(3)(c)(vii).

Extended moorage on waters of the state without a lease or permission is restricted, and mitigation of impacts to navigation and access is required. WAC 173-26-241(3)(c)(viii).

COMMERCIAL DEVELOPMENT WAC 173-26-241(3)(d)

Preference given first to water-dependent uses, then to water-oriented commercial uses. WAC 173-26-241(3)(d).

Water-enjoyment and water-related commercial uses required to provide public access and ecological restoration where feasible and avoid impacts to existing navigation, recreation, and public access. WAC 173-26-241(3)(d).

New **non-water-oriented commercial uses** prohibited unless they are part of a mixed-use project, navigation is severely limited, and the use provides a significant public benefit with respect to SMA objectives. WAC 173-26-

STATE RULE (WAC) REQUIREMENTS	
241(3)(d).	
Non-water-dependent commercial uses over water prohibited except in existing structures, and where necessary to support water-dependent uses. WAC 173-26-241(3)(d).	
INDUSTRY	WAC 173-26-241(3)(f)
Preference given first to water-dependent uses, then to water-oriented industrial uses. WAC 173-26-241(3)(f).	
Location, design, and construction of industrial uses and redevelopment required to assure no net loss of ecological functions. WAC 173-26-241(3)(f).	
Industrial uses and redevelopment encouraged to locate where environmental cleanup and restoration can be accomplished. WAC 173-26-241(3)(f).	
Public access required unless such a requirement would interfere with operations or create hazards to life or property. WAC 173-26-241(3)(f).	
New non-water-oriented industrial uses prohibited unless they are part of a mixed-use project, navigation is severely limited, and the use provides a significant public benefit with respect to SMA objectives. WAC 173-26-241(3)(f).	
IN-STREAM STRUCTURES	WAC 173-26-241(3)(g)
Definition: structure is waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. WAC 173-26-241(3)(g).	
In-stream structures protect and preserve ecosystem-wide processes, ecological functions, and cultural resources, including, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. WAC 173-26-241(3)(g).	
MINING	WAC 173-26-241(3)(h)
Policies and regulations for new mining projects:	
<ul style="list-style-type: none"> Require design and operation to avoid and mitigate for adverse impacts during the course of mining and reclamation; Achieve no net loss of ecological functions based on required final reclamation; Give preference to proposals that create, restore or enhance habitat for priority species are coordinated with state Surface Mining Reclamation Act requirements; Assure subsequent use of reclaimed sites is consistent with environment designation and SMP standards. WAC 173-26-241(3)(h)(ii)(A) – (C). 	
Mining waterward of OHWM is prohibited unless:	
(I) Removal of specified quantities of materials in specified locations will not adversely impact natural gravel transport; (II) The mining will not significantly impact priority species and the ecological functions upon which they depend; and (III) these determinations are integrated with relevant SEPA requirements. WAC 173-26-241(3)(h)(ii)(D).	
Renewal, extension, or reauthorization of in-stream and gravel bar mining activities require review for compliance with these new guidelines requirements. WAC 173-26-241(3)(h)(ii)(D)(IV).	
Mining within the Channel Migration Zone requires a shoreline conditional use permit. WAC 173-26-	

STATE RULE (WAC) REQUIREMENTS
241(3)(h)(ii)(E).
RECREATIONAL DEVELOPMENT WAC 173-26-241(3)(i)
Definition includes commercial and public recreation developments. WAC 173-26-241(3)(i).
Priority given to recreational development for access to and use of the water. WAC 173-26-241(3)(i).
Location, design and operation of facilities are consistent with purpose of environment designations in which they are allowed. WAC 173-26-241(3)(i).
Recreational development achieves no net loss of ecological processes and functions. WAC 173-26-241(3)(i).
RESIDENTIAL DEVELOPMENT WAC 173-26-241(3)(j)
Definition includes single-family residences, multifamily development, and the creation of new residential lots through land division. WAC 173-26-241(3)(j).
Single-family residences identified as a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. WAC 173-26-241(3)(j).
No net loss of ecological functions assured with specific standards for setback of structures sufficient to avoid future stabilization, buffers, density, shoreline stabilization, and on-site sewage disposal. WAC 173-26-241(3)(j).
New over-water residences and floating homes prohibited. Appropriate accommodation for existing floating or over-water homes. WAC 173-26-241(3)(j).
New multiunit residential development (including subdivision of land for more than four parcels) required to provide community and/or public access in conformance to local public access plans. WAC 173-26-241(3)(j).
New (subdivided) lots required to be designed, configured and developed to: (i) Prevent the loss of ecological functions at full build-out; (ii) Prevent the need for new shoreline stabilization or flood hazard reduction measures; and (iii) Be consistent with applicable SMP environment designations and standards. WAC 173-26-241(3)(j)
Floating Homes: Certain ones must be classified as a "conforming preferred use" per RCW 90.58.270(5).
Nonconforming Residential Structures: SMPs may contain provisions allowing structures not meeting current standards to be considered "conforming" per RCW 90.58.620.
TRANSPORTATION FACILITIES WAC 173-26-241(3)(k)
Proposed transportation and parking facilities must be designed and located where they will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions, or adversely impact existing or planned water dependent uses. WAC 173-26-241(3)(k).
Circulation system plans include systems for pedestrian, bicycle, and public transportation where appropriate. WAC 173-26-241(3)(k).
Parking allowed only as necessary to support an authorized shoreline use and which minimize environmental and visual impacts of parking facilities. WAC 173-26-241(3)(k).
UTILITIES WAC 173-26-241(3)(l)
Design, location and maintenance of utilities required to assure no net loss of ecological functions. WAC 173-26-241(3)(l).
Utilities are required to be located in existing rights-of-ways whenever possible. WAC 173-26-241(3)(l).

STATE RULE (WAC) REQUIREMENTS

Utility production and processing facilities and transmission facilities required to be **located outside of SMA jurisdiction**, unless no other feasible option exists. WAC 173-26-241(3)(l).

Existing Utilities: Not allowed to justify more intense development. WAC 173-26-211(3)(c)